

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 GREENEVILLE

4 UNITED STATES OF AMERICA, . DOCKET NO. CR-2-07-78
5 GOVERNMENT, .
6 VS. . GREENEVILLE, TN
7 BRIAN R. GRICE, . AUGUST 25, 2008
8 DEFENDANT. .
9

10
11 EXCERPT OF THE SENTENCING PROCEEDINGS
12 BEFORE THE HONORABLE J. RONNIE GREER
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE GOVERNMENT: U.S. DEPARTMENT OF JUSTICE
16 OFFICE OF U.S. ATTORNEY
17 HELEN C.T. SMITH, AUSA
220 WEST DEPOT STREET, SUITE 423
GREENEVILLE, TN 37743

18 FOR THE DEFENDANT: FEDERAL DEFENDER SERVICES OF
19 EASTERN TENNESSEE, INC.
20 NIKKI C. PIERCE, ESQ.
219 WEST DEPOT STREET, SUITE 2
GREENEVILLE, TN 37743

22 COURT REPORTER: KAREN J. BRADLEY
23 RPR-RMR
24 U.S. COURTHOUSE
220 WEST DEPOT STREET
GREENEVILLE, TN 37743

25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 (THE FOLLOWING IS AN EXCERPT OF THE SENTENCING
2 HEARING)

3 THE COURT: IN DETERMINING WHAT SENTENCE IS
4 SUFFICIENT BUT NOT GREATER THAN NECESSARY, THE STATUTE
5 REQUIRES THAT I CONSIDER SEVERAL FACTORS. WE HAVE ALREADY
6 ESTABLISHED THAT THE ADVISORY GUIDELINE SENTENCING RANGE
7 IN THIS CASE IS A TERM OF IMPRISONMENT FROM 360 MONTHS UP
8 TO LIFE, IN OTHER WORDS, 30 YEARS TO LIFE. THAT, OF
9 COURSE, IS A VERY SUBSTANTIAL TERM OF INCARCERATION IN THE
10 FEDERAL SYSTEM BECAUSE THERE IS NO PAROLE IN THE FEDERAL
11 SYSTEM, AND A 30 YEAR SENTENCE MEANS EXACTLY THAT, A 30
12 YEAR TERM OF IMPRISONMENT. A LIFE TERM OF IMPRISONMENT
13 MEANS, UNLIKE IN MANY STATE COURTS, THAT THE OFFENDER WILL
14 NEVER IN FACT BE RELEASED FROM THE FEDERAL PRISON. THAT
15 RANGE IS AN ADVISORY RANGE. THIS COURT IS NOT BOUND BY
16 THAT RANGE; BUT IN DETERMINING WHERE TO SENTENCE, TO CARRY
17 OUT THE CONGRESSIONAL MANDATE, THIS COURT MUST OF
18 NECESSITY BEGIN WITH THE ADVISORY GUIDELINE RANGE, THAT IS
19 A TERM OF 360 MONTHS TO LIFE IMPRISONMENT.

20 MS. PIERCE, WHO HAS BEEN HERE MANY TIMES AND
21 MS. SMITH AS WELL HAVE HEARD ME TALK ABOUT THE REASONS WHY
22 THIS COURT CONSIDERS THE SENTENCING GUIDELINE RANGE TO BE
23 AN IMPORTANT FACTOR IN SENTENCING. TO SOME EXTENT THOSE
24 FACTORS DO NOT APPLY IN THIS CASE. AS A GENERAL RULE I
25 FIND THE SENTENCING GUIDELINE RANGE TO BE IMPORTANT IN THE

1 SENTENCING DECISION FOR A COUPLE OF REASONS: FIRST OF
2 ALL, THE RANGE AS A GENERAL RULE IS BASED UPON MORE THAN
3 20 YEARS OF EXPERIENCE AND STUDY BY THE SENTENCING
4 COMMISSION. SECONDLY, THE RANGES ARE TYPICALLY BASED UPON
5 THE GATHERING OF SUBSTANTIAL STATISTICAL AND EMPIRICAL
6 DATA AND RESEARCH AND STUDY, AND IT'S BEEN MY VIEW THAT A
7 DISTRICT JUDGE SHOULD NOT LIGHTLY DISREGARD THE GUIDELINE
8 RANGE FOR THAT REASON.

9 IN THIS PARTICULAR CASE IT IS DIFFICULT FOR ME
10 TO SAY THAT THIS RANGE REPRESENTS A CONSIDERED
11 RECOMMENDATION OF THE UNITED STATES SENTENCING COMMISSION
12 BASED UPON STUDY AND RESEARCH AND EMPIRICAL DATA BECAUSE
13 THE SIMPLE FACT OF THE MATTER IS THAT THE GUIDELINE RANGE
14 IN THIS CASE IS LARGELY DRIVEN BY DECISIONS MADE BY THE
15 CONGRESS OF THE UNITED STATES. AND MS. PIERCE, WHO HAS
16 ARGUED VERY FORCEFULLY ON YOUR BEHALF IN THIS CASE, HAS
17 SUBMITTED ALONG WITH HER SENTENCING MEMORANDUM IN THIS
18 CASE A PAPER THAT WAS PREPARED BY AN ASSISTANT FEDERAL
19 DEFENDER IN THE WESTERN DISTRICT OF MISSOURI, TROY
20 STABENOW. THIS PAPER SUGGESTS THAT BECAUSE THE GUIDELINES
21 RELATED TO THE RECEIPT AND POSSESSION OF CHILD PORNOGRAPHY
22 ARE BASED NOT UPON EMPIRICAL DATA, BUT RATHER UPON
23 CONGRESSIONAL MANDATES, THAT PURSUANT TO THE RECENT
24 PRONOUNCEMENTS OF THE UNITED STATES SUPREME COURT, THIS
25 COURT AND OTHER DISTRICT COURTS ARE FREE TO DISREGARD

1 THOSE GUIDELINES OR TO GIVE THEM MUCH LESS WEIGHT THAN
2 WOULD TYPICALLY BE AFFORDED TO THE GUIDELINES. IN FACT,
3 SOME UNITED STATES DISTRICT COURT JUDGES AROUND THE
4 COUNTRY HAVE IN FACT CONCLUDED THAT IN SENTENCING FOR
5 CHILD PORNOGRAPHY POSSESSION OR RECEIPT THAT THE
6 GUIDELINES IN FACT SHOULD NOT BE ACCORDED MUCH WEIGHT FOR
7 THAT REASON.

8 THIS COURT, HOWEVER, REJECTS THAT ARGUMENT.
9 THE SUGGESTION THAT BECAUSE THE GUIDELINES ARE DRIVEN BY
10 CONGRESSIONAL MANDATE RATHER THAN BY STUDY CONDUCTED BY
11 THE SENTENCING COMMISSION AND, THEREFORE, DISREGARDED BY A
12 DISTRICT COURT IS NOT A REASONABLE ARGUMENT. I WILL QUOTE
13 FROM THE PAPER AT PAGE 29 WHERE THE WRITER SAYS THAT
14 CONGRESS MAKES MISTAKES, AND WHEN THE COMMISSION BLINDLY
15 FOLLOWS OR EXACERBATES A CONGRESSIONAL MISTAKE WITH
16 GUIDELINES THAT ARE NOT BASED ON EMPIRICAL EVIDENCE OR
17 EXPERIENCE AND THAT ARE CONTRARY TO SENTENCING PURPOSE
18 AND/OR CREATED -- CREATE UNWARRANTED DISPARITIES OR
19 UNWARRANTED SIMILARITIES, THE COURTS ARE FREE TO REJECT
20 SUCH GUIDELINES. THE REASON THE LOGIC IN THAT STATEMENT
21 IS FLAWED IS THIS, OUR SYSTEM IS BASED UPON THREE DISTINCT
22 BRANCHES OF THE GOVERNMENT. SETTING POLICY AND PASSING
23 LAWS IS IN FACT THE RESPONSIBILITY OF THE UNITED STATES
24 CONGRESS. IT SEEMS TO ME THAT IT IS NOT THE PLACE OF THE
25 UNITED STATES DISTRICT COURT JUDGE TO EXPRESS DISAGREEMENT

1 WITH A POLICY DECISION MADE BY THE CONGRESS, AND,
2 THEREFORE, DISREGARD THE STATUTE OR REFUSE TO GIVE IT
3 EFFECT. SO LONG AS CONGRESS ENACTS POLICY, AND SO LONG AS
4 CONGRESS ENACTS CONGRESS -- CONSTITUTIONAL STATUTES, THE
5 COURTS OF THIS COUNTRY SHOULD APPLY THOSE POLICY DECISIONS
6 RATHER THAN TO NULLIFY THEM BASED UPON A PARTICULAR
7 JUDGE'S SUBJECTIVE DISAGREEMENT WITH THE CONGRESSIONALLY
8 MADE DECISION.

9 WITH ALL DUE RESPECT TO THOSE JUDGES WHO HAVE
10 COME TO THAT CONCLUSION, IT SEEMS TO ME THAT JUDGES WHO
11 DISAGREE WITH POLICIES MADE BY THE CONGRESS EXPRESSED IN
12 THE STATUTE SHOULD RATHER THAN ATTEMPT TO NULLIFY THEM
13 FROM THE BENCH RESIGN THEIR POSITIONS AND RUN FOR
14 CONGRESS. THE GUIDELINES IN THIS CASE, WHETHER BASED ON
15 EMPIRICAL DATA OR NOT, DO IN FACT REFLECT THE CONSIDERED
16 JUDGMENT OF THE UNITED STATES CONGRESS, A JUDGMENT THIS
17 COURT, WHILE IT MAY HAVE THE DISCRETION TO DO SO, DOES NOT
18 CHOOSE TO IGNORE. THE REASON FOR THAT IS QUITE SIMPLE,
19 THE JUDGMENT OF THE CONGRESS REFLECTS THE JUDGMENT OF THE
20 PEOPLE WHO ARE GOVERNED UNTIL THE PEOPLE WHO ARE GOVERNED
21 MAKE A DECISION TO CHANGE THEIR REPRESENTATION IN
22 CONGRESS. IT IS REASONABLE TO ASSUME THAT A CONGRESSIONAL
23 POLICY DECISION REFLECTS THAT OF SOCIETY, AND IN THIS
24 PARTICULAR CASE THE DECISIONS MADE BY THE UNITED STATES
25 CONGRESS ARE REFLECTIVE OF SOCIETY'S RECOGNITION OF THE

1 SERIOUSNESS OF THE OFFENSES THAT ARE INVOLVED IN THE
2 POSSESSION, RECEIPT, DISTRIBUTION, PRODUCTION OF CHILD
3 PORNOGRAPHY. SO FOR DIFFERENT REASONS THAN I TYPICALLY
4 EXPRESS, I FIND THAT THE GUIDELINE RANGE IS IN FACT AN
5 IMPORTANT CONSIDERATION.

6 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
7 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
8

9
10 KAREN J. BRADLEY/S
SIGNATURE OF COURT REPORTER

05/27/2021
DATE